IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MELANIE JONES	§	
	§	
Plaintiff,	§	
	§	**Civil Action No. ____________**
VS.	§	
	§	
1. HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY F/N/A HARTFORD LIFE GROUP INSURANCE COMPANY, and 2. VF CORPORATION GROUP LONG TERM DISABILITY INCOME INSURANCE PLAN NO. 503	§ § § § § §	
Defendants.		

ORIGINAL COMPLAINT

1. Melanie Jones ("Plaintiff") files this her Complaint against Hartford Life and Accident Insurance Company F/N/A Hartford Life Group Insurance Company ("Hartford"), and VF Corporation Group Long Term Disability Income Insurance, Plan No. 503 ("Plan").

I.
Parties

2. Plaintiff is an individual who resides in Plano, Texas.

3. The Plan, at all times material to this action, has been an employee benefit plan within the meaning of 29 U.S.C. § 1003(a)(2), located at 105 Corporate Center Drive, Greensboro, NC 27408.

4. Hartford is an insurance company licensed to do business in Texas and issued Group Policy No.:83126726 ("Policy") to VF Corporation (VF), with an effective date of June 1, 2002.

II.
Jurisdiction and Venue of ERISA Claims

5. This action against Hartford and the Plan arises under the Employee Retirement Income Security Act of 1974 ("ERISA" or the "Act"), 29 U.S.C. § 1001 *et. seq*.

6. This Court has jurisdiction over this action pursuant to 29 U.S.C. § 1132(e)(1).

7. Venue is proper in this District pursuant to 29 U.S.C § 1132(e)(2), because the breach occurred in this District.

III. Factual Background

8. The Plan was an employee benefit plan which provided long-term disability ("LTD") coverage for employees of VF.

9 The Plan is subject to ERISA.

10. VF, Plaintiff's employer, established the Plan.

11. The LTD benefits are paid to qualified employees of VF through the Policy issued to VF by Hartford.

12. The Plan provided LTD benefits coverage to all employees in active employment.

13. At all pertinent times, Plaintiff was an employee of VF and was a participant, within the meaning of 29 U.S.C. § 1002(7), in the Plan.

14. Plaintiff became an employee of VF on or about February 21, 2000, and worked there continuously until approximately May 5, 2005.

15. Plaintiff was employed as a Senior Sales Representative at VF.

16. Plaintiff suffers from numerous medical conditions. These various conditions would not and will not permit Plaintiff to perform the duties of any occupation as defined in the Policy.

17. Plaintiff was paid long term disability benefits through June 18, 2007.

18. Hartford denied Plaintiff future LTD disability payments in Hartford's denial letter dated June 18, 2007.

20. Plaintiff appealed Hartford's denial of her LTD benefits.

21. On January 28, 2008, Hartford denied Plaintiff's appeal.

22. Plaintiff has complied with all requirements of the administrative appeal.

23. Plaintiff was and is disabled based on the definition of disability in the Policy.

24. The Policy provided this definition of disability:

> "Disability means that during the Elimination Period and the following 24 months, Injury or Sickness causes physical or mental impairment to such a degree of severity that You are:
> 1) continuously unable to perform the Material and Substantial Duties of Your Regular Occupation; and
> 2) not Gainfully Employed.
>
> After the LTD Monthly Benefit has been payable for 24 months, Disability means that Injury or Sickness causes physical or mental impairment to such a degree of severity that You are:
> 1) continuously unable to engage in any occupation for which You are or become qualified by education, training or experience; and
> 2) not Gainfully Employed."

. . .

IV.
COUNT ONE
Claim for Breach of the Plan/Policy Claim

25. Plaintiff is entitled to LTD benefits under the Policy as Plaintiff met the definition of disability contained in the Policy.

26. Plaintiff has complied with her obligations to make proof of claim in accordance with the Policy requirements.

27. Plaintiff is entitled to have the Court conduct a trial *de novo* of the issues stated herein, as the Plan Administrator did not delegate discretion to Harford.

28. In the alternative, Hartford's decision to deny Plaintiff's benefits was arbitrary and capricious.

29. The Plan provides that the people who operate the Plan have a fiduciary duty to do so prudently and in the interest of Plaintiff, and its participants and beneficiaries.

30. The Policy provides that where Plaintiff qualifies for benefits under the Policy, Hartford will pay benefits to age 65.

31. Such monthly benefit will be 60% of Plaintiff's monthly earnings less any deductible source of income.

32. Plaintiff was 41 years old at the time she became disabled.

33. Pursuant to 29 U.S.C. § 1132(a)(1)(B), Plaintiff seeks from the Plan, from Hartford or from both, benefits which have not been paid to her.

V.
COUNT TWO
Claim for Failure to Provide a Full and Fair Review

34. 29 U.S.C.§ 1133 requires that in accordance with regulations of the Secretary of Labor, every employee benefit plan must afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim. Hartford and the Plan failed to provide a reasonable claim procedure that would ensure full and fair review as described in paragraphs 37, 39, 41 and 42.

35. 29 U.S.C.§ 1133 requires that in accordance with regulations of the Secretary of Labor, every employee benefit plan must provide adequate notice in writing to any participant whose claim for benefits under the plan has been denied regarding the material and information needed to perfect the appeal.

36. 29 C.F.R. 2560.503-1 (g)(1)(iii) provides that a fiduciary of an employee benefit plan must provide a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary.

37. In the denial letter, dated June 18, 2007, Hartford made a general identification of documents but failed to identify any material or information necessary for Plaintiff to perfect her appeal, and the reason such material or information was necessary.

38. 29 U.S.C. § 1104(a)(1)(A) requires that a fiduciary of an employee benefit plan administer the plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries, and defraying reasonable expenses of administering the plan.

39. The Defendants operate under a conflict of interest as Hartford is both the determiner of claims and the payor of claims.

40. 29 U.S.C. § 1104 (a)(1)(B) requires that a fiduciary of an employee benefit plan administer the plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

41. Hartford selects and unitizes biased medical consultants to review claim files.

42. On Plaintiff's appeal, Hartford failed to consult with a vocational professional who could evaluate Plaintiff's impairments as such effected Plaintiff's ability to perform her regular occupation, which prevented Plaintiff from receiving a full and fair review of her claim.

43. 29 C.F.R. 2560.503-1(h) provides:

> (h) Appeal of adverse benefit determinations. (1) In general. Every employee benefit plan shall establish and maintain a procedure by which a claimant shall have a reasonable opportunity to appeal an adverse benefit determination to an appropriate named fiduciary of the plan, and under which there will be a full and fair review of the claim and the adverse benefit determination.
>
> . . .
>
> (2) Full and fair review. Except as provided in paragraphs (h)(3) and (h)(4) of this section, the claims procedures of a plan will not be deemed to provide

a claimant with a reasonable opportunity for a full and fair review of a claim and adverse benefit determination unless the claims procedures--

(3) . . .

(iii) Provide that, in deciding an appeal of any adverse benefit determination that is based in whole or in part on a medical judgment, including determinations with regard to whether a particular treatment, drug, or other item is experimental, investigational, or not medically necessary or appropriate, the appropriate named fiduciary shall consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment;

44. As a result of Hartford's violations of Title I of ERISA and the ERISA regulations Plaintiff has been harmed by the failure of Defendants to provide her claim a full and fair review.

45. Plaintiff requests that the Court award her benefits in accordance with Court One or in the alternative, remand this claim to Hartford and/or the Plan so that they:

a. can identify the material necessary to perfect her claim and the reason why such information is necessary;

b. can eliminate the conflict of interest and utilize unbiased record reviewers; and

c. can consult with the appropriate vocational professional.

VI.
COUNT THREE
Claim to Enforce Rights Under the Terms of the Plan

46. 29 U.S.C. § 1132 provides in relevant part:

§ 1132. Civil enforcement
(a) Persons empowered to bring a civil action
A civil action may be brought—
(1) by a participant or beneficiary—
(A) . . .
(B) . . . to enforce his rights under the terms of the plan, . . .

47. The Certificate of Insurance Provides:

> In addition to creating rights for plan participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate your plan, called "fiduciaries" of the plan, have a duty to do so prudently and in the interest of you and other plan participants and beneficiaries.

48. On Plaintiff's appeal, Hartford failed to consult with a vocational professional who could evaluate Plaintiff's impairments as such effected Plaintiff's ability to perform her regular occupation, which prevented Plaintiff from receiving a full and fair review of her claim.

49. Hartford selects and utilizes biased medical consultants to review claim files.

50. The Certificate of Insurance provides:

> Any denial of a claim for benefits will be provided by the insurance company and consist of a written explanation which will include:
>
> i) the specific reasons for the denial;
> ii) reference to the pertinent plan provisions upon which the denial is based;
> iii) a description of any additional information You might be required to provide and explanation of why it is needed; and
> . . .

51. In the denial letter, dated June 18, 2007, Hartford made a general identification of documents but failed to identify any material or information necessary for Plaintiff to perfect her appeal, and the reason such material or information was necessary.

52. Plaintiff requests that the Court award her benefits in accordance with Court One or in the alternative, remand this claim to Hartford and/or the Plan so that they:

a. can identify the material necessary to perfect her claim and the reason why such information is necessary;

b. can eliminate the conflict of interest and utilize unbiased record reviewers; and

c. can consult with the appropriate vocational professional.

VII.
COUNT FOUR
Attorney's Fees Pursuant to 29 U.S.C § 1132(g)(1) Against the Plan and Hartford

53. Pursuant to 29 U.S.C. § 1132(g)(1), Plaintiff seeks an award of her reasonable and necessary court costs, and attorney's fees in connection with the prosecution of this action.

PRAYER

WHEREFORE, Plaintiff requests that the Court order:

1. The Plan and/or Hartford to pay Plaintiff the full employee benefits incurred and unpaid at the time of trial;

2. The Plan and/or Hartford pay Plaintiff's reasonable attorney's fees incurred in pursuing recovery of benefits owed to her;

3. In the alternative, Plaintiff's claim be remanded to the Plan and/or Hartford to comply with ERISA and/or the Plan as discussed herein;

4. The Plan and/or Hartford pay Plaintiff pre-judgment and post-judgment interest; and

5. That Plaintiff recover the cost of this action and such other and further relief as the Court may deem proper under the circumstances.

Respectfully submitted,

/s/Bernard A. Guerrini

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